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within the Rooibos industry: a case in point for harnessing
geographical indication potential in South Africa**

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The move towards geographical indication protection within the Rooibos industry: a case in point for harnessing geographical indication potential in South Africa

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Summary

The paper aims to reflect on the impact of harnessing GI dynamics within the South African policy environment which provides protection for GIs under trade mark law by discussing the relevance for the Rooibos industry of geographical indication (GI) protection. It sets out by depicting the evolution of intellectual property strategies within the industry and analyses how this industry is moving towards GI to address the issues of name protection, quality management and biodiversity conservation. The paper highlights the legal options available to the Rooibos industry and steps that have been taken towards achieving protection nationally and internationally. Factors which have supported the industry in embracing the GI philosophy are discussed against the background of the success factors identified by Barjolle and Sylvander (2002).

1. South African and rooibos legal background

In contrast with Southern European Countries, South Africa does not have a cultural history of geographical indication protection. However, as a founding member of the WTO, South Africa must comply with the minimum requirements for the protection and enforcement of intellectual property rights, as provided for in TRIPS. South Africa complies with the TRIPS provisions through a combination of consumer protection and unfair competition laws, its trade marks registration system and an administrative scheme for the protection of its geographical indications for wine (Laing, 2005). South Africa thus essentially follows the United States' example of protecting geographical indications under trade mark laws and the only means to obtain registration for a geographical indication in South Africa remains under the Trade Marks Act (No.194 of 1993).

The industry's legal battle in United States however, highlighted the specific role of geographical indication protection and served to a large extent as catalyst for the shift occurring in the South African Rooibos industry towards the incorporation of collective strategies. The origins of the dispute date back to 1994 when a South African company, Forever Young, registered the mark Rooibos in the United States in connection with among other things herbal teas. This in effect gave Forever Young the exclusive right to market products labelled Rooibos in the United States. As all Rooibos products are marketed under the name Rooibos (as a generic name) this gave Forever Young a virtual monopoly over the marketing of Rooibos products in the United States. The rights to the mark were subsequently assigned to a United States citizen, Virginia Burke-Watkins, principle owner of Burke International. No longer able to market its products under the name Rooibos in the United States, a South African company Rooibos Limited instituted legal action in the United States in order to cancel this registration on the basis that it was generic and therefore non-

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distinctive. After years of expensive litigation the dispute finally came to a head when Burke-Watkins, faced with mounting legal costs and several additional law-suites pending, agreed to voluntarily surrender her rights to the trade mark.

The dispute highlights two legal options with respect to the assertion of exclusive rights in the name Rooibos. The first option would be protection under trade mark law. In this respect it should be noted that registrability of a trade mark depends on it being distinctive and not descriptive. This prevents the registration of terms which are or have become generic, as was found to be the case for Rooibos in the US dispute. A distinction should however be made between registration of an individual trade mark on the one hand and registration of a collective or certification trade mark on the other. In terms of South African trade mark law⁴, it is possible to register a geographical indication as a collective trade mark which serves to distinguish the members of an association from persons who are not members. It may further in certain circumstances be possible to register a geographical indication as a certification trade mark, which distinguishes goods with respect to, amongst others, geographical origin. Therefore, although there is a prohibition on registration of a geographical indication as an individual trade mark, no such prohibition exists with respect to registration as a collective or certification trade mark. It is important to note however, that by providing for the protection and registration of geographical indications under the Trade Marks Act, geographical indications are treated as a species of trade marks and not a geographical indication *per se*.

The second legal option to asserting exclusive rights in the name Rooibos entails protection as a geographical indication. As mentioned, South African law does not provide for protection of a geographical indication *per se*. However, during the course of this paper it will be shown how the Rooibos industry has, despite the absence of an appropriate legal framework, moved towards embracing collective strategies based on the geographical indication philosophy. Although this move towards geographical indication protection has its foundations in the threat of misappropriation (as reflected in the US dispute), the emphasis is increasingly shifting to reservation of the term Rooibos for its use as a valuable marketing and quality management tool.

2. Rooibos trajectory and supply chain

2.1. The product and the supply chain

Rooibos is the fermented and dried leaves of the plant *Aspalathus linearis* that is mainly used as an herbal tea pure or in many different types of blends. A wide variety of flavoured Rooibos products is also available. It is of reddish colour and is considered to be a good substitute for black teas and coffee, due to its health benefits and to its versatility and variety. Rooibos is also used as an ingredient especially in the cosmetic industry. Rooibos is packaged in, and available as, loose leaves, various tea bags and powders, ready-to-drink products, self-brewed iced-teas, cosmetics and shampoos, in tins, glass, tetra-packs, cardboard boxes, cans and bottles. New innovative product application includes green (unfermented) and organically produced Rooibos.

The turnover of the rooibos tea industry was estimated at 180 million Rands in 2004 (corresponding to 22.5 million euros). The export market represents more or less 60% of the production against 40% for the domestic market (TISA 2004).

Rooibos has been used and harvested from the wild at least since the early nineteen century in the Cederberg Region of South Africa and its first marketing took place in 1904 in Europe under the Eleven' O Clock brand which is still in use. However, the development of the

⁴ Possibility of registering collective and/or certification trade marks differ across jurisdictions.

Rooibos industry properly started with its cultivation in the 1930's. In 1948, in reaction to a crisis in the marketing of Rooibos, the Clanwilliam Tea Cooperative was established forming the basis of the Rooibos Control Board, which was appointed by the Minister of Agriculture in 1954. Until the 1990's, this state organization was the one and only actor in processing and marketing of Rooibos. Then, the voluntary dissolution of the Rooibos Control Board in 1993 transformed the industry from a regulated monopoly into a deregulated industry. As a result, on the one hand, a public company, Rooibos Ltd, still mostly owned by producers was established based on the physical and intellectual asset of the control board.

On the other hand, as indicated by Snyman (2007) many farmers broke away to form their own firms with King's Products (Pty) Ltd being the first to establish a processing plant in 1996. Following the emergence of a number of new players in the last ten years, the Rooibos supply chain has become quite complex (see figure 1 below) with some actors specialising in one particular function while others have been integrating different segments. Nowadays, Rooibos Ltd, which has historically been dominating the industry and the market, is still retaining the biggest market share domestically (more than 90%) and at the export level controlling over all about 75% of the market.

Rooibos tea production involves cultivation and harvesting of the plant; first level processing that transform the wet unfermented tea into red brown tea at the tea court and is predominantly done at farm level; second level processing that includes pasteurisation, sieving, dust extraction and is done at processing plant by the processors; and then packing that can be done by different actors as explained below.

The South African Rooibos tea supply chain is currently dominated by eight large processors equipped with the facilities to undertake secondary processing. These eight main South African players (i.e. Rooibos Ltd, Khoisan Tea, Coetzee & Coetzee, Cape Natural Tea Products (CNTP), King's Products, Red T Company, Big Five Rooibos Company, and Maskam Redbush) control an estimated 90% of total annual supply and sales (Snyman, 2007) and are involved in all levels of the supply chain in South Africa to a small or large extent. They collect and transform rooibos, and either sell it to intermediaries who market it or market it directly. Most second level processors have also positioned themselves as marketers. Four of the processors have their own in-house packing facilities and also offer contract packing services, namely Rooibos Ltd, Red T Company, Khoisan Tea, and King's Products.

Rooibos farmers are between 350 and 550 (Snyman, 2007; Hansen, 2006). These consist of a number of small-scale farmers, with many of them being organized into two Tea Co-operatives that count about 100 members actively involved in Rooibos farming. These cooperatives have been specialising in marketing organic and fair trade rooibos for the export market. The combined output of the small-scale farmers, including the two co-operatives, is estimated to be about 2.5% (225 - 250 tons).

On the other hand there are a few large farmers that cultivate up to 5000 ha. Among these large scale farmers, some are marketing their rooibos directly under their own brand names. These include The Big Five Rooibos Company (Pty) Ltd who is the largest independent producer⁵ with its brand African Dawn, but also Biedouw Valley, Oudam farming or Ouhuis.

⁵ With approximately 350 to 500 tons of Rooibos per year, it is the third largest single producer of rooibos in South Africa.

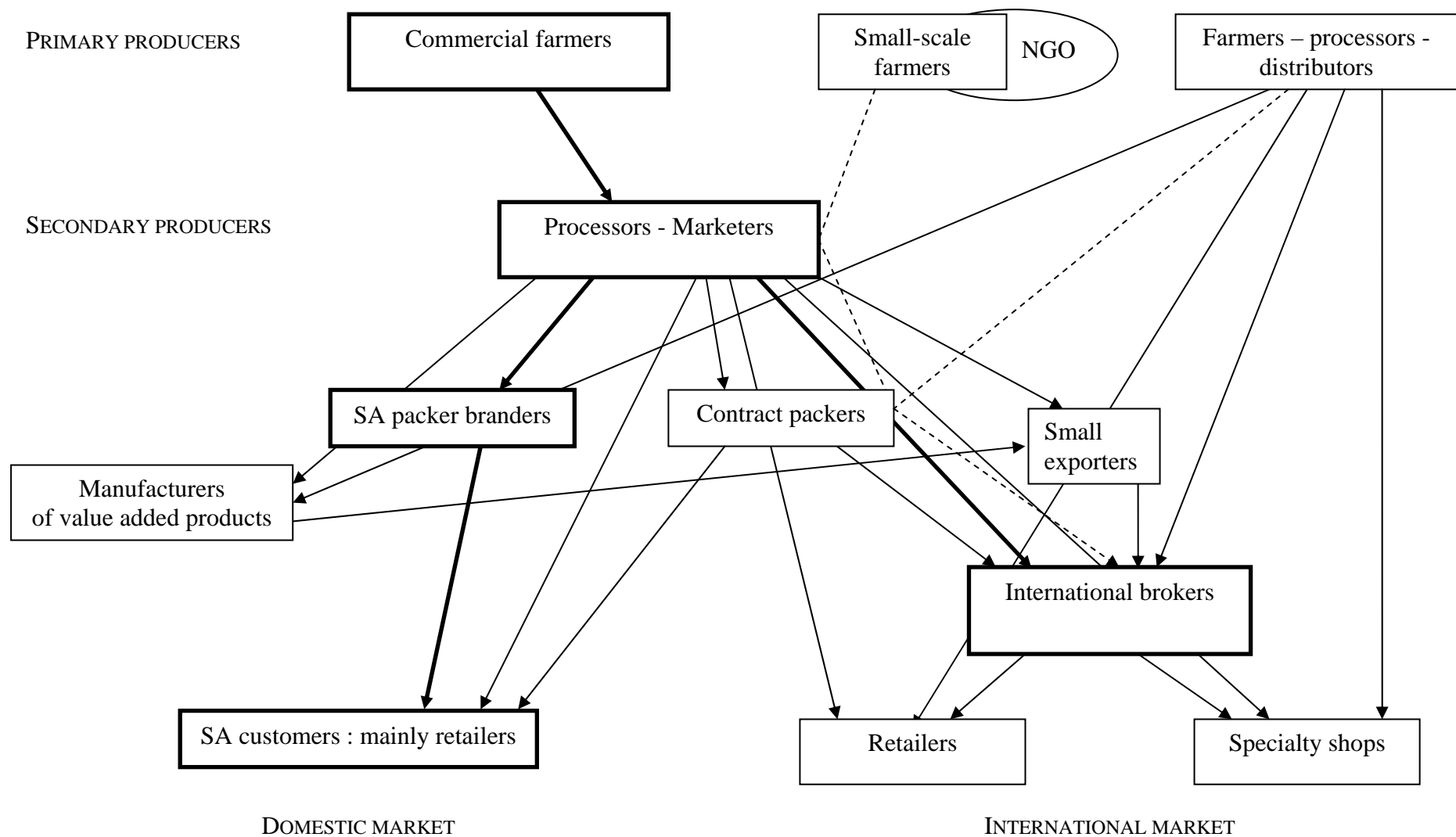


Figure 1: Adapted from Biénabe and Troskie (2008)

About two thirds (i.e. approximately 250) of rooibos farmers still deliver their crops to Rooibos Ltd, being both shareholders and suppliers. The second biggest producer grouping is Cape Natural Tea Products (Pty) Ltd with approximately 40 farmers as shareholders (Snyman, 2007). It was established as a joint partnership between Rooibos farmers and marketers. A further role player (i.e. the second biggest processor) is the Khoisan Tea Company which has integrated most functions in the supply chain, farming Rooibos, fulfilling primary and secondary production, and distributing bulk Rooibos and Rooibos products globally. However, it buys its largest share from approximately 100 contracted farmers. The rest of the tea is being sold to other processors and buyers, mostly through annual contracts.

In addition to the herbal tea industry, several other types of actors and companies are using Rooibos as an ingredient and are marketing Rooibos based products, thereby using the name Rooibos in one sense or another. Snyman (2007) indicate that there are currently three main manufacturers (Pty) Ltd's specialising in value-added products like extracts, instant powders, flavours, etc. In cosmetics, the market leader is Annique (Pty) Ltd, which sold the "Rooibos" name to Burke International and was central in the US case. Generally, Rooibos cosmetics, toiletries, ice teas etc are contract manufactured and only forming a small portion of suppliers' operations.

2.2. Market developments

Rooibos has been sold for many years inside South Africa and branding is an important dimension of domestic consumer demands with two brand owners dominating the market (i.e. Unilever Foods (Pty) Ltd and National brands Ltd) and Rooibos Ltd enjoying almost a monopolistic situation. However, Snyman (2007) also points out that the "market is showing signs of 'commoditising' with low-end products perceived as becoming a threat to established brands that carry substantial marketing investments over many years". The domestic market has known an annual growth of less than 5% over the past decade and it appears to becoming quite saturated (Snyman, 2007). Domestically rooibos is often considered as an inexpensive alternative to other (mostly imported) hot beverages.

Contrary to the domestic market which has remained quite stable, the export market has seen huge growth over the past decade. In 2005, total exports were 5 500 tons of which 4000 tons were exported to Germany (70%), 550 tons to the Netherlands (10%) and 400 tons to Japan (6%). Other significant export markets include the United States, Australia and the United Kingdom. The export growth and exploitation of the Rooibos market potential can, to a large extent, be attributed to the marketing initiatives of the recent entrants as well as to new consumer trends in the main export markets. Developments on the export market have been recently related to product differentiation dynamics. Various private marketing and branding strategies are emerging inside South Africa, especially oriented towards the export market. In addition, the recent emergence of smallholder farmers' cooperatives with fair trade and organic labelling strategies, have led to increased certification in the industry. However, these strategies are still limited in their scope and application, only representing a very small percentage of the production. Popularity of rooibos among consumers at international level appears to be strongly linked to its health attributes. The rise in production and consumption can also be related to the dynamics of innovation in the industry and the increasing product range (not only the blend herbal teas, green tea but also cosmetics, soft drinks, 'capuccino' Rooibos, 'expresso'

Rooibos...). And according to Gress (2004) among others, Rooibos still has a huge market potential before reaching saturation in its main export markets.

Three South African players export more than 80% of annual sales volumes. After Rooibos Limited, the second largest exporter is Khoisan Tea with approximately 20%, followed by Coetzee & Coetzee with about 10% of market share (Snyman, 2007). The other significant role players include Cape Natural Tea Products (CNTP), which provides custom-blending and product development facilities to suit specific customer requirements⁶. King's Products specificity is its focus on high quality organic Rooibos to meet the increasing demand for it in Europe. However, despite its quality focus, it sells rooibos in bulk to overseas customers. Maskam Redbush has also positioned itself in the high quality tea segment being located in a well known high quality production area. 40% of its rooibos is Ecocert organic certified. It is also using the estate concept as a promoting device and has introduced a vintage for its product.

Of particular interest are also the independent farmers that are marketing rooibos under their own brands. Among these, the biggest one is the already mentioned Big Five Rooibos Company which specializes in farming, processing and distributing only rooibos from its own farm and is promoting its product as being 'estate' rooibos, using the concept of wine estate as a quality signal and focusing on its capacity to guarantee excellent quality control, sustainability and traceability of its product. 99% of the company's business lies in exports, of which 90% is sold in bulk, but their focus also lies on adding value to the products and to market more of their own branded products. Most of the independent producers branding include some reference to South Africa either through use of Afrikaans word (e.g. Oudam farming, Ouhuis) or South African place name located in the rooibos production area (e.g. Biedouw Valley).

It should be noted that it is mainly the smallest South African players that are developing differentiating strategies based on branding and labelling. Interestingly these brands and labels are not based on the name rooibos but arise from other reputational indicators.

Most Rooibos is exported in bulk, in loose leaf format (i.e. approximately 95%). Rooibos export marketing and supply chain are dominated by a few leading European tea importers based in Germany who are the largest tea brokers in the world. These firms buy Rooibos in bulk for blending and resale to other countries. Given the almost monopsonistic situation faced by the South African role players on this market, competition is tough and the market is very price sensitive. Huge volume of rooibos is sold in bulk on annually negotiated contracts within existing relationships. In addition, bilateral agreements take place on a case by case basis. Importantly, there is no significant market determining the price and there is generally a lack of transparency in the transactions. New relationships are being established as new markets are opening in other countries (e.g. Argentina). As these markets are still in their infancy, they are not specifically addressed in this paper.

Below are some insights on the German and United Kingdom markets which are among the most significant. The German tea consumer market is relatively fragmented with many different companies offering a multitude of different teas, creating their own blends and flavours; others buying the tea readily prepared to their

⁶ <http://www.rooibostea.co.za/>

instructions (Arnold et al., 2007). The market leaders for branded teas in Germany are the specialized tea companies Teekanne GmbH and the Ostfriesische Teegesellschaft mbH (OTG) with their brands Messmer and Milford. 25% of the market consists of trade marks or private labels produced for supermarket - or discounter-chains (Arnold et al., 2007). Interestingly, there are many names used for rooibos in Germany with the two most common being rooibos and rotbush (Arnold et al., 2007). Others are Rooitea, Rooibusch, Redbos, Massaitee, Buschmanntee, Redbuchsie, Kopmans-Tea reflecting the relatively long German history in trading and consuming rooibos.

On the other hand, the market for tea in the United Kingdom is dominated by a small number of very well-established brands relying on strong advertisement in mainstream media (Arnold et al., 2007). However, the market leaders in black tea, Tetley and PG Tips are not well inserted in the rooibos market. Tetley has only recently launched Tetley Redbush for which it procures directly from Rooibos Ltd with the Rooibos Ltd logo being included on the packaging and being used as an indication of authenticity and direct sourcing from the growers⁷. PG Tips does not, to the knowledge of the authors, offer rooibos tea.

Twinings and Clipper Teas, the two best positioned companies in the herbal and fruit tea market, offer a range of rooibos products under their brand (such as pineapple and rooibos for Twinings and organic rooibos for Clipper Teas). Otherwise, the UK herbal and speciality tea market is dominated by a large number of small suppliers. Dragonfly is offering organic rooibos under the Tick Tock brand⁸ as well as a range of rooibos blends including, mint, breakfast, and Earl Grey. Initially specialised in health food shops, Dragonfly teas are now found in supermarkets. Whittards of Chelsea offers a range of approximately eight rooibos teas. This firm markets its products through a network of small-scale high street shops. The Redbush Tea Company is specialised in marketing a variety of rooibos teas and soaps through UK supermarkets and health shops⁹. The firm is offering rooibos teas with different flavour blends as well as an organic version. According to Arnold et al. (2007), the Redbush Tea Company indicates on its website that tea is specially blended for the company by estates in Clanwilliam.

Regarding the UK market, it is worth concluding by highlighting what Arnold et al. point out: “consumers of ‘new’ teas tend not to be product or brand loyal, unlike consumers of traditional black tea. As befits their experimental behaviour, they are more likely to buy on impulse or for a particular occasion, rather than on a habitual basis. Indeed, herbal and fruit teas are often drunk on an occasional, supplementary basis to standard black tea, rather than as a regular substitute for it. They also tend to be interested in particular flavours or blends rather than brands, which poses a challenge for suppliers of speciality teas, who may not have the marketing capability to make their brands stand out in consumers’ minds.”

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<http://www.mad.co.uk/BreakingNews/BreakingNews/Articles/c55e37e26cce49b3a189ea18b8a38d4c/Tetley-launches-Redbush.html>

<http://www.tetley.co.uk/Our-Products/Ranges/New-Tetley-Redbush>

⁸ www.dragonflytea.com

⁹ <http://www.redbushtea.com/>

3. Evolution of IP strategies

3.1. Insights into trade mark registration associated with rooibos

This section explores the current status of IP use related to the name Rooibos in the rooibos industry. This has been approached by compiling an inventory of current IP rights with respect to the Rooibos name. It constitutes the point of departure from which the move towards a collective strategy is further explored. The inventory is based on the consultation of the South African trade mark register, with the aim of identifying trade marks consisting of or incorporating the name Rooibos or use of the name Rooibos in translation (Redbush). Internationally, the online records of the main export markets for Rooibos, i.e Germany, The Netherlands, US, Australia, UK, were consulted.

Interestingly, the results of the searches indicate that it is not necessarily the main actors identified above that are pursuing IP strategies surrounding the name Rooibos. Only two South African companies, Rooibos Limited and Annique Skincare Products (Pty) Limited, appear to be pursuing an IP strategy around the name Rooibos in international markets. Annique is mainly active in the cosmetic industry as already mentioned. Although it is not a major player in the industry, its appropriation of the name Rooibos in the US led to the US trade mark dispute. It is interesting to note that it is still one of the main registrants of trade marks surrounding the name Rooibos. However, its use of the name Rooibos is no longer used in isolation but in combination with other descriptive matter mainly related to the cosmetic industry.

Rooibos Limited appears to be the most aggressive registrant of trade marks including or consisting of the name Rooibos. This is in line with the fact that it is historically the largest role player in the industry and it has been acting as a custodian of the name Rooibos. Rooibos Ltd's role as custodian of the name can be traced back to the United States Trade mark dispute in which it played a key role in reclaiming the name. It has since been pursuing trade mark registrations for the name Rooibos internationally. Its strategy surrounding these registrations can be interpreted as not being based on individual appropriation but rather on defensive registrations to prevent similar situations as was encountered in the United States and the associated expenses. As the largest South African actor, Rooibos Limited stands to lose the most from the misappropriation of the name. Furthermore, the threat of Rooibos Limited appropriating these marks for its own use is negated by the expungement proceedings which will undoubtedly be brought against it and the risk of loss of credibility.

Apart from the actors addressed in the tables, various smaller actors from different countries outside South Africa are registering trade marks around the name Rooibos. Importantly however, these actors appear to be using the name Rooibos in a descriptive manner and not as distinctive markers. The use of the term Rooibos as a descriptor is probably a major reason explaining the relatively few trade marks that consist of or include the name Rooibos. This is particularly relevant in the South African context where the name is descriptive of the product.

The rooibos industry change in approach towards the use of intellectual property is largely the consequence of the industry's experience and near loss of the name Rooibos in the United States. The lengthy and costly legal battle served to illustrate the importance of a proactive strategy and served as the inception of the move towards protecting the industry's collective IP in view of potential global threats. This battle has been instrumental in establishing the South African Rooibos Council, which

is a collective body representing the whole South African Rooibos industry (with people elected from the small and commercial producers, labourers, processors, packagers, etc) and which is intended to drive collective action processes. The United States case highlighted the possibility of acting offensively against misappropriation by setting out to expunge irregularly registered trade marks. With the growing awareness surrounding irregular trade marks registration, the threat of misappropriation is lower and actually observed misappropriation of the name Rooibos does not seem significant as evident from the tables.

Although trade mark law allowed South African producers to claim back the rights to market Rooibos in the United States, it did not really allow them to claw back the legal rights to the name. It only prevented other actors from having exclusive rights to the name. Existing legal shortcomings in addressing the public good aspect of the name Rooibos under trade mark law led the industry to explore the second legal approach, namely GI protection (as set out in the first section), to asserting exclusive rights in the name Rooibos for legitimate use by the industry (i.e. only production originating from South Africa and adhering to agreed standards should be defined as rooibos). The development of a GI strategy is intended to be complementary to individual trade mark registrations that do not necessarily include the name Rooibos *per se*. This could be equated with strategies followed in wine marketing where there are different levels of branding.

3.2. Towards a collective strategy: GI development

In relation with a research program on GI potential for adding value to local productions and improving rural communities' access to markets and livelihoods - the IPR DURAS project coordinated by the University of Pretoria -, the Rooibos industry started investigating the possibility of reserving the name Rooibos and protecting its collective reputation and IP through geographical indications labeling with a particular view to getting recognition from the European Union. If interest for GIs was already present among the Rooibos industry, actual discussions and activities about it took place mainly as a result of the research program when a consultation process was undertaken. Relations were established between the research team and the South African Rooibos Council (SARC).

Reservation of the name Rooibos was reaffirmed as one of the key strategic objectives of the SARC; and a specific Task Team was appointed by the industry at its 2006 Annual General Meeting to explore the potential for developing a GI. This Task Team consists of representatives from commercial farmers, small-scale farmers, processors and marketers as well as a representative from the NGO environment. It is actively supported by researchers from the Western Cape Department of Agriculture (Provincial Department), the University of Pretoria, CIRAD (French Agricultural Research Centre for International Development) and Cape Nature (the Nature Conservation Parastatal body of the Province).

Different collective and territorial issues are becoming important at industry level, especially in relation to the need to codify practices. The sustaining increased demand and the entrance of new role players especially inside South Africa in the last decade in connection with the new export developments has been associated with increased quality problems being reported inside the industry with, in particular, some brands being used to package and market products foreign to the brand proprietor and of low

quality. And the increased complexity of the supply chain both increases the need for traceability and renders it more difficult. The problem of quality control and traceability is exacerbated by the fact that a significant part of the rooibos production is blended with other teas or aromas added. Furthermore, the intensification of the production practices and expansion of the production area constitute a strong stake for the Rooibos industry from an environmental point of view, especially as a threat to biodiversity.

Interestingly, the recent idea of developing a GI has appeared to constitute a relevant framework for discussion and negotiation around these issues. The main stakes and incentives for developing an appropriate GI strategy, according to the industry, are thus firstly to reserve the name Rooibos and to hinder potential production delocalisation outside South Africa, but also to ensure better control over quality and to combine the GI and the biodiversity strategy. Biodiversity being both a strong stake and being an inherent part of the rooibos specificity, the industry decided to explore the potential for using GI as a tool for implementing the industry biodiversity strategy.

The GI task team is thus also integrated by a consultant from the provincial nature conservation agency, Cape Nature, in charge of implementing a Rooibos biodiversity strategy. Thus, in addition to the promotion of biodiversity best practices *per se* as part of Cape Nature activities, biodiversity elements are being incorporated into the product specification for rooibos to reinforce the biodiversity strategy.

Following the establishment of the GI task team, several meetings were conducted to discuss the GI strategy, and the proposal for the product specification that constitutes the main piece of the rooibos industry application for a GI to the European Union is being progressively completed. Guidelines for drawing the specification were based on the EU requirements. The different points have already been well explored and debated as part of the Task Team activity. The biodiversity dimension in particular has been the object of a broad consultative process with farmers from the different areas of production.

The capacity to reach consensus on the GI specification was the result of a very pragmatic approach in the industry and an interesting balance in the process between not excluding farmers, being able to take advantage of new opportunities and ensuring a strong enough specification. As a result, the Task Team is close to finalising a product specification. Agreement was reached to activate the legal proceedings to ensure appropriate local protection as a step toward EU application. It was decided to first apply for registration for a GI in South Africa under the current framework using the draft specification prepared for EU application. At the same time a letter has been sent by the industry to the National Department of Trade and Industry to inform about the industry will to register a GI in SA and in the EU and to ask for a more appropriate legal framework. A local law firm was then recently instructed to take the necessary legal steps towards ensuring appropriate GI protection domestically.

4. Factors that supported the industry in embracing the GI strategy

Rooibos is currently the only case that has formally taken steps towards developing a GI in South Africa. It is to a certain extent playing a role of pilot case to see how GI could be developed in South Africa and a role of model that may be followed by other industries. It is then interesting to discuss the factors which have supported the industry in embracing the GI philosophy. This is done against the background of the success factors identified by Barjolle and Sylvander (2002).

4.1. Specificity, reputation and market attractiveness

Various factors contribute to rooibos being a specific product. The first, most apparent, factor relates to its endemism and its geographical dispersion. Rooibos tea derives from an indigenous herb that grows exclusively in the Northern and Western Cape provinces of South Africa, precisely in a small area located 200 km in the North of Cape Town, the Cederberg Mountain region and around Clanwilliam and Citrusdal.

Being an endemic species from the highly biodiverse fynbos biome inside South Africa strongly supports rooibos potential as a GI. However, it also has significant implication from an ecological point of view. Interestingly, the rooibos GI strategy has been incorporating the biodiversity dimension. The industry is then intending to address the risk of losing reputation that could arise from the perception of the rooibos having a negative impact on the environment. Consumer perception over the product is considered by Barjolle and Sylvander (2002) as an essential factor for the success of an origin labelled product and it can be negatively influenced by a negative impact on the environment.

Another interesting point is that the qualities of the rooibos differ inside its production area with specific 'terroir' effects being recognised inside the industry. A rooibos of higher quality is then generally considered to be produced on the Eastern side of the Cederberg Mountains. Furthermore, traditional areas for rooibos production are mainly mountainous areas, which produce the highest grade of rooibos as quality improves with an increase in altitude, higher mineral content in the soil and lower temperatures. The Sandveld area, which is a low lying area, is in general producing the lowest grade with variation depending on the climatic condition and on practices (in a dry year, quality in the Sandveld area can substantially improve if associated with good cultivation practices). However variations also hold at the micro level among farmers and due to differences in fermentation from day to day. Tea from the different plots and production areas is usually blended to meet demand and realise a consistent quality.

Know-how and practices associated to the processing stage are widely shared inside the South African industry. However, these are considered to have a significant influence on the final quality of the rooibos. And specific qualifications are associated to the function of the 'tea master' who controls and monitors the first processing stage. Furthermore, rooibos farmers and processors have developed specific know-how in relation with the blending of rooibos teas from different plots and different cultivation areas, which are associated with their capacity to assess and manage rooibos quality. Blending is an important step in ensuring consistent taste and colour.

Rooibos tea is recognised to have a highly specific taste and colour which is sought after internationally. In the process of drafting the GI specification, it was totally clear that rooibos is not just anything derived from *Aspalathus Linearis*. Both the GI task

team discussions and results from a panel of experts¹⁰ that were convened as part of the GI process show the importance of the colour of the leaves (i.e. red-brown colour), of the aroma and of the taste of the extract in characterizing rooibos quality and thus accepting the product as actually being rooibos.

It was also clear from the beginning that the GI is first intended to protect the name Rooibos per se and not a specific quality or 'terroir' of rooibos; and it is thus to include all the South African production that will respect the minimum quality conditions for it to be called Rooibos. This is key to understanding the drawing of the specification by the industry. Despite the existence of a traditional area as opposed to the expansion area, there have not been many controversies regarding the total area to be delimited. Again regarding the definition of the varieties to be included in the GI product description, a quite inclusive approach was followed. In the specification, rooibos is defined as prepared from *Aspalathus linearis* which consist of the sub-species that occur naturally in the broader area of the Cederberg (as described by Ginsberg), and are traditionally used for the production of the tea. This includes the Nortier variety which is the only one that is cultivated but also other wild sub-species traditionally wild harvested for the production of rooibos. There is a wide agreement that all area with potential for rooibos should be considered inside the delimited area and all *Aspalathus Linearis* varieties should be accepted as long primary producers and processors are able to produce rooibos of acceptable quality.

In addition to its strong specificity, Rooibos enjoys a well established reputation based on its beneficial properties and pleasant taste. The fact that Rooibos is caffeine free as well as a powerful antioxidant has made it a sought after drink both locally and internationally. As already mentioned, the export market has seen huge growth over the past decade. And according to Gress (2004) among others, Rooibos still has a huge market potential before reaching saturation in its main export markets.

4.2. Coordination and quality management

This dimension constitutes probably the most interesting part to learn from the development of the rooibos GI strategy. Indeed, the process of defining the GI clearly triggered new coordination processes inside the industry.

The risk of quality degradation, and thus of loss of reputation at industry level, is perceived as an important threat especially by the major actors in South Africa. With the expansion and opening of new markets, need for standardization becomes critical. It becomes more and more necessary for the commercial viability of the industry to define what can be called Rooibos¹¹ and ensure that only agreed on minimum level of quality is sold.

The process engaged with the industry to develop the GI allowed the actors to appropriate the key dimensions of GI protection and labelling, and to foresee its

¹⁰ This panel consists out of 15 individuals in the Industry and is representative of Managers of Companies as well as their quality managers. Web-based consensus forming software (Armstrong/Wharton, 2008) was used so that each panel member could, at his/her own convenience, log onto the system and complete a short questionnaire on the quality aspects of Rooibos. Through various iterations of the questionnaire as well as exposing the panel to the anonymous responses of the rest of the panel, a consensus position could be reached.

¹¹ According to the industry, not all herbal teas derived from the *Aspalathus linearis* plant can be defined as rooibos. Implicit minimum quality standards are adhered to by the industry.

merits with regard to the current challenges that they are facing. It was instrumental in the awareness of the actors of the industry of their strong common interest in facing key industry challenges and in particular the quality one. It reinforced the industry interest in the GI tool. Indeed, the industry is looking for international protection and control of quality against abuse and misuse. Thus in relation with the reservation of the name, a key dimension that has been widely discussed is the role that GI could play in collective quality management and control and associated management of the collective reputation, especially on the export market. For this reason the development of an envelope of quality standards has been a priority of the current GI initiative. The emphasis has been strongly put on ensuring that a minimum quality standard is enforced across the rooibos industry. Interestingly the GI initiative, although firstly introduced through a research program became rapidly driven by the industry.

The instruction to the Task Team was to develop the outlines of a set of criteria that would determine rooibos of an acceptable quality. In other words, only product that passes the minimum set of criteria would be considered of acceptable quality and all else would not be considered to be Rooibos. Nevertheless, once it passed the minimum requirements a wide range of quality grades would still exist enabling the different actors to pursue their individual quality strategy while appropriating the collective one as pointed out by Barjolle and Sylvander (2002) as an important element of coordination and cooperation among firms. If technical issues still need to be further addressed, a consensus on a minimum quality standard is emerging.

Despite seemingly wide heterogeneity of producer actors, which has been argued by Tregear et al. (2007) to be associated with conflicts in product qualification, discussions regarding the GI qualification process have been characterized by constructive debates, and a consensus over most of the GI specification was reached relatively easily. This can be linked to the quite homogenous production practices at processor level, with these practices being considered as the most significant for the GI specification and the processors leading most of the discussions.

Prior to the GI initiative, the efforts for organizing and improving coordination among rooibos producers and processors concerned mainly research aspects. The GI initiative represents a strong move towards stronger collective action at industry level including the role that the industry is playing in terms of political lobbying for the government to establish a more appropriate framework. Even if still in its early stages, the SARC which is driving the GI initiative is enjoying increasing support from the industry. Small-scale farmers' community has recently properly integrated it.

It is interesting to highlight how the current industry organization with a major role player, Rooibos Ltd together with a number of recent entrants among which holds a huge competition, has influenced the dynamics towards this collective strategy. Rooibos Ltd, which is in a clearly dominant position at the processing level, has been instrumental in the move towards the GI strategy with a strong focus on developing a proper quality standard and the ways to control it. As was previously suggested, Rooibos Ltd is at least partly assuming a role of custodian with regard to name protection. This custodian role as well as its efforts to set up a more stringent collective quality management system can be explained by it being the industry single largest role player, and thus being more exposed to risks associated with reputation loss. Furthermore, Rooibos Ltd, on the one hand, already has a sophisticated quality management system. It is therefore unlikely to be a costly process to implement a collectively agreed quality management system. On the other hand, it is mainly

producing conventional quality rooibos in bulk without differentiating through branding and/ or labeling in most cases. They are therefore likely to benefit significantly from generic differentiation from other herbal teas, as is being pursued through the current GI initiative.

Generic differentiation of rooibos from other herbal teas stands to benefit the entire industry in view of rooibos positioning as a distinct herbal tea in the international market. The increased risk of low quality rooibos reaching the market poses a serious threat to all actors through the concomitant loss of reputation. In this respect, it is clear to most players that individual and collective strategies have a complementary role to play. As observed in the wine industry, a combination of private and collective differentiation strategies can be harnessed to protect both individual firm and collective industry reputation.

However, some questions still need to be solved. Among these is in particular the question of ensuring the control of the specification in a cost effective manner. As GIs have never been implemented in South Africa, there exists no institutional framework in this regard. The rooibos Industry is relatively small and small margins in the industry would not allow for significant financial outlays for quality checks. It follows that the product description would probably make provision for spot checks with severe scientific analysis taking place only in the case of legal dispute. Two potential avenues for inspection actually are foreseen. On the one hand the Perishable Products Export Control Board (PPECB) is a Statutory Organisation that is responsible to ensure that all exports of perishable products (except products of animal origin) complies with the standards of the importing country. As more than 60% of Rooibos is exported, it means that the PPECB is already inspecting a significant part of the Rooibos harvest. At the same time the industry is in the process of establishing an inspection service as part of their Biodiversity Initiative. As the product standards in this initiative is closely linked with the quality standards identified in the GI process, these inspectors could play an important primary or complementary role. But the possibility to modify the quality down the supply chain and the power imbalance between South African role players and the big international brokers clearly question the capacity to enforce the GI requirements along the supply chain.

4.3. Institutional support

The Rooibos industry receives significant institutional support from various institutions such as the Agricultural Research Council (ARC), academic institutions, government departments, as well as from certain non-governmental organisations. These institutions have made significant contributions in terms of capacity building, business development and research activities. Furthermore, local public institutions, in particular those which contributed financially to the legal costs incurred in the US trade mark dispute, have been pushing for cooperation at industry level. Finally the GI qualification process has been strongly supported by the IPR DURAS research programme. Even if the industry has been quickly driving the process, the GI qualification process could only be followed thanks to the facilitation process that was instrumental in facilitating the debate, providing, when asked to, information on GI related issues, and reflecting on the GI philosophy as has been developed in Europe. Indeed, very little knowledge and understanding exist currently at local level regarding the different dimensions of GIs and their potential.

It is worth pointing out that the institutional support in general that the industry is receiving is not being reflected in or associated with the development of a territorial quality strategy as defined by Pacciani et al. (2001). Despite the incorporation of the biodiversity dimension, the GI strategy being pursued by the rooibos industry can be clearly assimilated to the strategy referred to as 'Regulation of the product reputation' by Pacciani et al. (2001) in contrast to a territorial quality strategy. The GI rooibos strategy is essentially a supply chain strategy, the initiative being clearly driven by the South African supply chain actors, in particular the processors, and the focus being mostly on reserving the name for the industry and defining a collective minimum quality standard. Territorial strategies exist inside the industry with in particular a Rooibos Heritage Route¹² that has recently been developed through the Greater Cederberg Biodiversity Corridor (GCBC) mostly with the involvement of small-scale farmers and the support from NGOs and local government institutions. Many other rooibos producers have developed tourism activities on their farm such as The Big Five Rooibos Company who receives over 1000 tourists per annum. However, these are not considered as part of the GI initiative. As suggested by Tregear et al. (2007), this supply chain strategy characterizing the rooibos qualification process as opposed to a territorial quality strategy can be related to the South African socioeconomic context characterized by a quite strong 'individualistic competition convention'.

Finally despite strong institutional support at industry level, there is currently a clear weakness at State level in facilitating protection by means of legislation. Steps towards developing a GI in the rooibos industry could be done through a research and industry driven process. This was quite successful in the preparation phase and it is about to result in a GI specification that follows EU requirements and was achieved through consensus inside the industry. As an equivalent and reciprocal level of protection is no longer required, it may now be sufficient if Rooibos is protected domestically under trade mark laws and not necessarily under an equivalent geographical indication registration system. However this still presents a hurdle to possible registrants as criteria for registration are different and the process may take a long time (i.e. about 6 years).

¹² This route features biodiversity and scenery, adventure activities, cultural activities, Rooibos products and the people of the region.

Conclusion

As developed in the paper, the rooibos case presents a strong potential as a GI. It is the first industry taking steps toward establishing a GI in South Africa; and it is exhibiting significant tendencies toward collective action. It constitutes an interesting case in terms of the use of IP rights with the proliferation of IP strategies linked with new developments at export level and the entrance of new actor, and in terms of how these are related to different quality management strategies. Interestingly the development of a GI qualification process oriented towards achieving international recognition, and especially EU recognition, has strongly contributed to make explicit joint objectives regarding quality and biodiversity among the South African role players; and the GI strategy is conceived as complementary to individual quality, which has been critical in enhancing collective action. In addition to the intrinsic characteristics of the product and production process and to its attractiveness on the market, the rooibos case is thus featuring interesting characteristics in terms of coordination and cooperation over product management, playing a key role in its potential as a successful GI.

Being the most advanced initiative at the industry level and the only industry that has formally taken steps towards developing a GI in South Africa, the rooibos industry is, to a large extent, serving as a pilot case in South Africa to see how GIs could be developed in South Africa. In this sense, it presents a role of model for other agricultural industries. The industry is furthermore playing the role of lobbying towards the government, in particular the Department of Trade and Industry (DTI), for the development of an appropriate institutional framework. The development of the rooibos case is enriching the research process and the political debate. They bring a better understanding on the legal requirements for GI, in particular to achieve a strong international recognition (i.e. from the EU). They also provide insights into the skills requirements both at public level to assess GI application, monitor their use and enforce unlawful use, and at private level would certification bodies or other actors be mandated to control GI specification implementation. They also highlight the level of public and private engagement and collective action required to pursue a meaningful GI route.

If the rooibos case supports the potential for developing GIs in South Africa, the lack of harmonisation and of strong recognition of GIs internationally which complicates looking for international protection in a wide number of countries as well as the intricate political issues that have developed as part of the international and bilateral negotiations (in particular between the EU and SA) still puts into question the benefit of investing in a strong public support inside South Africa. On the other hand, South Africa owns a huge diversity of traditional knowledge and indigenous resources and of agro-food products based on local resources with potential for adding value, but it suffers critically from the lack of collective action. The process of preparing the GI inside the rooibos industry based on the EU GI framework contributed strongly to enhancing collective action at industry level. This could act as an incentive for providing similar type of environment and facilitation to other industries and to provide for more adequate means of protection.

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